

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BAG OF HOLDINGS, LLC,
Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,
Defendants.

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**Civil Action
No. 14-6774**

ORI FEIBUSH,
Plaintiff,

v.

COUNCILMAN KENYATTA JOHNSON,
Defendant.

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**Civil Action
No. 14-3947**

ORDER

AND NOW, this day of , 2015, upon consideration of the City of Philadelphia and Councilman Kenyatta Johnson's Motion to Quash Plaintiff's Subpoenas Duces Tecum; it is hereby ORDERED and DECREED that said Motion is GRANTED. It is further ORDERED that Plaintiff's Subpoenas are quashed without prejudice to reissuance.

BY THE COURT:

Beetlestone, J.

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Defendants' Motion to Quash Plaintiff, Bag of Holding's Subpoenas Duces Tecum

Defendants, the City of Philadelphia and Councilman Kenyatta Johnson, by their undersigned counsel, hereby file this Motion to Quash Plaintiff's subpoenas to testify and produce documents directed to Felton Hayman, Sean Schellenger, Michael Stillwell, Danny Phagoo, Chris Dewey, Eric Feinberg, Zhen Jin, Steve Kosloski, Jason Cutaia, Jim Hickman, and Anthony Drake. In support of their motion, Defendants include the attached Memorandum of Law.

WHEREFORE, City of Philadelphia respectfully requests that this Court quash Defendant's subpoena(s) with prejudice.

Respectfully Submitted,

Date: March 20, 2015

/s/ John J. Coyle
Assistant City Solicitor
Civil Rights Litigation Unit
City of Philadelphia Law Department
1515 Arch St. 14th Floor
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p. 215-683-5447
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Michael R. Miller
Assistant City Solicitor
Civil Rights Litigation Unit
City of Philadelphia Law Department

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**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO QUASH
PLAINTIFF BAG OF HOLDINGS, LLC'S SUBPOENAS**

I. INTRODUCTION

Defendants, the City of Philadelphia and Councilman Kenyatta Johnson, by and through their undersigned counsel, move to quash subpoenas for testimony and documents served upon third parties Felton Hayman, Sean Schellenger, Michael Stillwell, Danny Phagoo, Chris Dewey, Eric Feinberg, Zhen Jin, Steve Kosloski, Jason Cutaia, Jim Hickman, and Anthony Drake. See Subpoenas, attached hereto as Exhibit A.

II. BACKGROUND

Defense counsel and Plaintiffs' counsel held Rule 26(f) conferences on March 10, 2015 and March 18, 2015. Defense counsel provided Rule 26 initial disclosures to Plaintiffs on March 25, 2015. To date, neither Plaintiff has produced Rule 26's required initial disclosures.

Plaintiff, Bag of Holdings, LLC, without notice or service to Defense Counsel, recently served subpoenas on a number of third parties. On the morning of Wednesday, March 25th, the undersigned received a voicemail from Stuart Goodman, Esq. who is the General Counsel for Streamline Solutions. Mr. Goodman informed the undersigned that he received at least four subpoenas (directed to Sean Schellenger, Michael Stillwell, Danny Phagoo, and Chris Dewey) which required Streamline employees to attend depositions and produce documents. Upon learning of these subpoenas, defense counsel reached out to counsel for Plaintiff Bag of Holdings, LLC to determine how many subpoenas had been served and upon whom. Plaintiff's counsel produced eighteen (18) subpoenas which were served on various individuals requiring their appearance at a deposition and requiring them to produce documents. These subpoenas were authorized by the Clerk's Officer on March 10, 2015. The document production requests attached to the subpoenas is attached to this motion as Exhibit B. The subpoenas required appearance on the following dates and times:

Felton Hayman	April 3, 2015	10:00 AM
Sean Schellenger	April 3, 2015	12:00 PM
Michael Stillwell	April 3, 2015	2:00 PM
Danny Phagoo	April 6, 2015	10:00 AM
Chris Dewey	April 6, 2015	12:00 PM
Steve Cobb	April 6, 2015	2:00 PM

Eric Feinberg	April 8, 2015	10:00 AM
Zhen Jin	April 8, 2015	12:00 PM
Steve Kosloski	April 8, 2015	2:00 PM
Jason Cutaia	April 9, 2015	10:00 AM
Jim Hickman	April 9, 2015	12:00 PM
Anthony Drake	April 9, 2015	2:00 PM
Frank Kumas	April 20, 2015	10:00 AM
Cormac McAteer	April 20, 2015	12:00 PM
Michael Goldstein	April 20, 2015	2:00 PM
Frank Mazzio	April 21, 2015	10:00 AM
Donna DeStefano	April 21, 2015	12:00 PM
Mark Scott	April 21, 2015	2:00 PM

III. ARGUMENT

A. The Subpoenas fail to comply with Federal Rule of Civil Procedure 45's notice requirements.

Rule 45(a)(4) of the Federal Rules of Civil Procedure require that any subpoena which commands the production of documents, electronically stored information, or tangible things must be served upon each party **before** it is served upon the person to whom it was directed. Here, despite the subpoenas being approved on March 10th, they were never served upon defense counsel until counsel's notification by a third party and subsequent call to Plaintiff's counsel. This occurred on March 25th, six business days

before the first subpoena date and more than two weeks after the subpoenas were approved by the Clerk's Office. Defendants had no notice that Plaintiff intended to depose these witnesses or request documents from them because Plaintiff has not provided initial disclosures to date. Effectively, Defendants have been given one week to determine how 18 random names are related to the issues in this case, prepare for the depositions, and file document either supplementary document requests or objections to Plaintiff's requests.¹ Plaintiff's failure to comply with the requirements of FRCP 45(a)(4) and the unfair prejudice this failure has placed on Defendants require that these subpoenas be quashed without prejudice to properly serve the subpoenas.

B. The Subpoenas fail to comply with Federal Rule of Civil Procedure 30's limitation on the number of depositions.

Federal Rule of Civil Procedure 30(a)(1)(A)(i) places a limitation of ten depositions upon a party in an action. The rule further requires leave of Court to conduct more than ten depositions. Here, Plaintiff has already scheduled 18 depositions and has communicated his desire to conduct more. For this reason, the Court should grant Defendants Motion to Quash.

IV. CONCLUSION

WHEREFORE, the City of Philadelphia and Councilman Kenyatta Johnson respectfully request that this Honorable Court grant their Motion to Quash for the reasons stated above.

¹ This also calls into question Plaintiff's compliance with FRCP 45(d)(1) which imposes upon an attorney issuing a subpoena the responsibility to take reasonable steps to avoid imposing undue burden and expense on a person subject to a subpoena. If Plaintiff had conferred with defense counsel about his intention to subpoena these individuals, the parties could have potentially reached agreement regarding the dates of these subpoenas and the information sought from the third parties.

Respectfully submitted,

Date: March 20, 2015

/s/ John J. Coyle
Assistant City Solicitor
Civil Rights Litigation Unit
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CERTIFICATE OF SERVICE

I, John J. Coyle, Counsel for the City of Philadelphia and Councilman Kenyatta Johnson,
hereby certify that a true and correct copy of the Motion To Quash was uploaded to ECF and
thereby served upon all parties of record.

Respectfully submitted,

Date: March 20, 2015

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